1914-15.
[Courts]

File No. 265-14
S.L. No. 1-5.

Signature of witnesses to depositions [R.H.P. Subject 426-B]

G. R. S. 58

Previous references.

File No. 265-14

1914. 15
(Courts)

Serial Nos. 1-5

Later references.

Ch. 288-1561.

Preserve

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-5

Part B for Mgr 16.

SUBJECT.

Signature of witnesses to depositions (R.A.P. Subj. 426-13).

To The Regr Civil Jg. 3706-7
5) " D.C. Bg. Og 17.3.16.

State that Govt consider it desirable to have the signature of witnesses taken to depositions made by them except in small causes & summary trials.

W D 1351—GPB—20,000—13-12-15

Mahoun
4.4.16.

G.R.S. 11] 1914-15

GENERAL AND REVENUE SECRETARIAT.

(Cons)

NOTES.

File No. 265

FILE HEADING.

Signature of witnesses to depositions –
R.A. Subject 426-13

From

No. Dated Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

P.T.O.

NOTES—First Sheet.

GPE—35,000—15-6-12

2931

Ch 265-14

52

(2)

SUBJECT No. 426.

Signature of witnesses.

Mr. C. Krishnamurti, Law Association, Bangalore.

Summary of Representation.—It is requested that witnesses be required to sign their depositions both in civil and criminal cases.

Subject No 71-B
civil dept 137.

Notes

Chief Court.

Wallace J. 1) The signature of witnesses should in my opinion be invariably taken to all depositions made by them -

Seek rules 2) The depositions are read over to witnesses But it is better if their signature or thumb impressions are taken thereto -

3) Send with a draft

Buck 19/7/15 MM

Issue
Es
20/8/15

25/2

Sd 1

To The Registrar, Chief Court

No J2857 Dy 23. 2. 1915

Calls for the opinion of the Judges of the Chief Court in the matter

Sd 2

From the Sessions Judge

No 4087/279 Dy 4/10. 3. 1915

Furnishes the opinion of the Judge.

Subd.
Legs.
15/8/15 MM

Ch
19/8

1) Please submit a draft in accordance with the opinion of the Chief Court.

Es 18/8/15

2931/5

(3)

G. R. S. 12]

General and Revenue Secretariat.

C5 File No. 105 of 1914-15

Serial No.

2) Subd with a draft in accordance with the opinion of the majority of the Judges.

Hg.
18/3/15 WH

3) An alternative draft is subd as directed:

Hg.
22/3/15 WH

4) The general opinion of all the Judges seems to be that no change in the existing law is necessary and that the Magistrate's (judge's) certificate is a sufficient guarantee for correctness. It seems appears that this is the proper view to take. Apparently it is upon this ground that the Legislature has found it unnecessary to make any provision for obtaining the signature of witnesses.

5) A draft in accordance with this view is submitted.

6) The Chief Judge thinks that in principle there may be no objection to get the witness to sign his deposition. This will be an idle formality in the case of illiterate witnesses who are illiterate. Their mere thumb impressions will not be a sufficient guarantee for correctness. It also appears that if any change ~~should~~ is necessary, an executive order may suffice. In Madras Criminal Rules of Practice, an executive ~~order~~ rule is laid down to this effect, and Mr Wallace does not favour this view when he expressed that such signatures should invariably be taken.

NOTE—Contn. sheet.

GPB—25,000—2-11-14

2931

H. R. S. 12]

General and Revenue Secretariat.

Cfo File No. 265 of 1914-15

Serial No.

S. K. Chanar's Criminal Rules of Practice put up. Not rec'd with from "SR" of 1st II

(Vide Rule 168 in S.K. Chanar's Criminal Rules of Practice).

EB 22/3

First Member)

1) I am inclined to Comply with this demand. Of Course the Rule will not apply to Summary Cause or Summary trials.

2) If this is agreed to, the Ch. Court may again be Consulted as to whether the object may not be achieved by prescribing Rules of practice, as this enquiry would be merely supplementary to the Provns of the Code.

May be settled at a meeting.

23/3/15

Dewan

6241
24.3.15.

NOTE—Contn. sheet.

C.S. ai Dewan

9) This may be considered at a Meeting of Committee 5.5.15

GPB—2500—2-11-11

621 2931

(5

G. R. S. 12]

General and Revenue Secretariat. | Cfo File No. 265 of 1914-15

Serial No.

Cancel

(10) The Chief Ct may be consulted as proposed by the First Member

Draft
4/8
Putnp. draft
Eg
5/8

of 3/8

(11) Draft sub.
Eg.
7.8.15

J
Secy A
19/8

(12) Issue
Eg
7/8

3 To the Registrar, Chief Court
No J678 Dy 10.8.1915

Enquires whether the request of the R.A. member may not be complied with by prescribing rules of practice as this enjoins but would be merely supplementary to the provisions of the Code.

4 From the Same Offg
No. 1081/79 Dy 26/27.8.1915

States that the Judges do not consider that the proper function of a rule of practice is to supplement the provisions of the Code and that, in their opinion, the case is not one in which the amendment of the Code is called for

(13) Sub.
Eg.
30.9.15
30/9/15

NOTE—Contn. sheet.

GPB—25.000—2 11-14

621

(6)

R.-S.-[12]

General and Revenue Secretariat.

Cf File No. 265 of 1914-15

Serial No.	
	14) The Judges consider that if a Rule of practice is issued, it would be ultra vires and adhere to their former view that no change is necessary in the law.
	15) We may accept the opinion of the Ch. Ct on the qu^n of necessity to amend the Code.
11	16) The main qu^n may be considered at a meeting.
	17) Papers

4/10/15

Dutt)

Dungar Das 5/10

1952 5.10.15

C.S. 30-10-15

4/11

4.11.15 4/11

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S.

(7

Extract from the Proceedings of the 365th Meeting of the Council of His Highness the Maharaja, held at Bangalore on the 17th November 19 18

15. SUBJECT.——(Clause vii of the Schedule).

Question of requiring witnesses to sign their depositions both in Civil and Criminal cases.

OPINION OF THE COUNCIL.

19 Legislation may be undertaken to require witnesses to sign their depositions both in Civil and Criminal cases.

Sd/- M.Visvesvaraya,
Dewan of Mysore.

"Extract"

D-M-Narasimha Rao 19/11

Secretary to Government,
General Department.

GPB—2,000—5-5-10

(8

G. R. S. 12]

General and Revenue Secretariat.

(5 File No. 265 of 1914. 5

Serial No.	
(9)	A D.S.N is also put up. Dewan)

Dewan Bahadur
29/11

2713
29.11.15

NOTE—Contn. sheet.

GPB—20,000—30-6-15

(9)

Final Note by the First Member of Council.

Subject:—

Question of requiring witnesses to sign their depositions both in Civil and Criminal Cases.

---

(10) In the Representative Assembly meeting of 1913, it was requested that the witnesses be required to sign their depositions both in Civil and Criminal Cases. I was inclined to comply with this demand. The rule will not apply to Small Cause or Summary trials. The Chief Court was consulted as to whether the object may not be achieved by prescribing Rules of Practice as this injunction would be merely supplementary to the provisions of the Code. The Judges consider that legislation is necessary though they are of opinion that the required change is unnecessary. The matter was considered by the Council who are of opinion that legislation may be undertaken to require witnesses to sign their depositions both in Civil and Criminal cases.

(11) The resolution of the Council may be ----

(10

graciously approved.

H H Manjcundaya

Dated 25. 11 '15. First Member of Council.

(14)

Submitted to His Highness.

× Flag W.

22) I submit herewith a 'Final Note' by the First Member of Council on the question of requiring witnesses to sign their depositions both in Civil and Criminal cases.

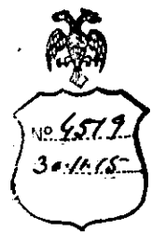
× Para 7 of offg. no 6.

23) 2. The resolution of the Council that legislation be undertaken in order to require witnesses to sign their depositions may graciously be approved.

M. Viswanath

31 Dec. 1915.

Record of Cases submitted for the Orders of His Highness the Maharaja



Subject.

Question of requiring witnesses to sign their depositions both in Civil and Criminal cases.

509

Order.

24) ~~KRW~~
7/12/15

Law Secy
8.12.15
RG
BV 111
KM
8/12/15
25) Legislation authorising the letters.

621

(13

G. R. S. 12]

General and Revenue Secretariat. | Cls File No. 265 of 1914-15

Legis 32-15

Serial No.

26)
Subd.

Extracts of the notes have been taken as regards the proposal to amend the code of criminal Procedure and that Bill will be subd. separately. As regards the amendment of the Civil Pro. code as rule 5 of Order XVIII sch. I has to be ~~drafted~~ amended. This ~~has to be done~~ does not require legislative action, ~~and~~ The Rule committee has to be asked to draft the amendment and send it up with their ~~opinion~~ report to the Chief Court for ~~necessary action~~ recommendation. The file will therefore be retransferred to the Courts Secy:

22/1/15

27)
May a draft to the Secy Rule Committee be prepared? or to the Registrar, Chief Ct?
11.1.16)

28) Prepare draft to Reg' Chief Court.

29)
A draft order is subd.
6.3.1916

Cls 22/1/15 23

The file had been linked with Legis 32/15, 1914

Cls 26/1

ES 26/1

ES 26/1

ES 6/3/16

NOTE—Contn. sheet.

GPB—20,000—30-6-15

First Member)

524.

(14

G. R. S. 12]

General and Revenue Secretariat. | File No. | of 191

Serial No.	
	Draft approved by the First member 30/3
	RG 44/3/16 30/3 June
5	To: The Registrar Chief Court 29/3 The D.C. Bangalore &c: No 3706-7 14th. Mar: 1916 States that Govt consider it desirable to have the signatures of the witnesses taken to deposition made by them in small cause and summary trials

NOTE—Contn. sheet.

GPB—20,000—30-6-15

(15

Ch File No. 965-14

Serial No. 1

Diary No. of letter replied to _____

No. 7 2851

General and Revenue Secretariat

To

The Registrar Chief Court

Sir,

Date of issue 23.2.1915.

Signed by M. C. Srinivasa Ayr

I am directed to invite your attention to subject No. 426 ~~of the Proceedings~~ of the Representative Assembly of 1913.....~~and the reply of Government thereto~~ in the matter of ~~taking the signature of~~ witnesses to their depositions

and to request you to be so good as to favour Govt. with the opinion of the Chief Court ~~your opinion~~ in the matter at an early date.

List of enclosures _____

Drafted by HSC 19.2.15

Copied by _____

Examined by _____

I have, etc.,

Cs 20/2/15

For *Secretary to Govt.*

GPB—5-6—7 11-14

Chief Court of Mysore,

Bangalore, dated 4th March 1915

From

N.T.Gopaliengar, Esq., B.A., LL.B.,

Registrar of the Chief Court of Mysore,

B A N G A L O R E .

DIARY No. J.2931
1914-15
SECTION CS
FILE No. 265-14
CONF. No. 1

To

D.M.Narasinga Rao, Esq., B.A., B.L.,

Offg:Secretary to the Government of Mysore,

General and Revenue Departments.

Sir,

Adverting to your letter No. J.2851/cts.265-14-1 dated 23rd Ultimo requesting that in the matter of taking the signature of witnesses to their depositions, the opinion of the Chief Court may be obtained and forwarded, I am directed to forward herewith the opinions of the Judges of the Chief Court.

I have the honor to be ,

Sir,

Your most obedient servant,

N Gopaliengar

REGISTRAR.

M.S.L.

(17

THE CHIEF JUDGE:-

I see Wallace J. is in favour of the resolution: I should have thought the certificate of the Magistrate, that it was read over and acknowledged correct is sufficient guarantee of correctness , but there is no objection in principle to asking witnesses to sign: both Codes would require amendment if it is to be done.

26-2-1915.

Encl 6-CS
265-14-2

Mr. JUSTICE K.S. CHANDRASEKHARA-AIYAR :-

I agree with the Chief Judge. The summary of the representation does not specify the evil apprehended from the existing practice.

27-2-1915.

Mr. JUSTICE T . PARAMASIVA IYER:-

I am of opinion that the proposed change is unnecessary and that the failure of the Codes to provide for witnesses attesting their depositions was intentional. The Criminal Procedure Code evidently considered sections 353 and 360 and 361 as ample safe-guards as regards witnesses, while under section 364 the additional safe-guard of attestation is provided in respect of an accused's statement. Similarly the Civil Procedure Code makes a distinction between evidence recorded in the presence of parties and evidence taken under Order 18, Rule 16 in the possible absence of both or one of the parties requiring the witness' signature in addition to the Judge's in the latter case.

28-2-1915.

R E G I S T R A R .

M.S.L.

6

12

G. R. S. 26] 7/5

(18

SUBJECT.....

.....

.....

*Diary No. of letter replied to*__ _____

Section 65.

File No. 265-14

Serial No. 3

General and Revenue Secretariat

( )

, *the* 191 .

No. J 678.

Date of issue 10/8/1915

To

The Registrar,

Chief Court

Sir,

Adverting to correspondence ending with your letter no. 4087/279 dated the 4th Mar 1915 in the matter of the signature of witness being taken to their depositions, I am directed to request that Govt may be favoured with the opinion of the Chief Court as to whether the request of the R.H.

over.

9/7/14

(9)

member may not be complied with by prescribing rules of practice as this injunction would be merely supplementary to the provisions of the Codes.

I have to

&c

for Secy

for Secretary

kg
7.8.15

List of enclosures.

Copied by

Examined by

GPB—20,000—11-2-14

1081/19

Chief Court of Mysore, 120

Bangalore, dated 26th August 1915.

...ry No. J.....621

1915-16
SECTION C
FILE No. 265-14
SERIAL No. 4

From

N. T. Gopaliengar, Esq., B. A., LL. B.,
Registrar of the Chief Court of Mysore,
B a n g a l o r e .

To

D. M. Narasinga Rao, Esq., B. A., B. L.,
Secretary to the Government of Mysore,
General Department,
B A N G A L O R E .

Sir,

Adverting to your letter No. J 678/cts.265-14-3 dated the 10th Instant requesting to favour the Government with the opinion of this Court as to whether the request of a member of the Representative Assembly in the matter of the signature of witnesses being taken to their depositions may not be complied with by prescribing rules of practice, I am directed to state that the Judges do not think that the proper function of a rule of practice is to suppliment the provisions of the Code. A rule of practice so for as it deals with procedure, is intended to provide a uniform machinery for carrying out the provision of the Code: it is obviously inconvenient if a judge cannot by reading the Rules laid down in the Code tell what he has to do to make his record of evidence correct. To put part of the rules in the Code and part elsewhere is pratically to have two codes

which

'21

which is confusing and probably illegal.

So for as Civil Courts are concerned the rule could not be made under the code except by the Rule Committee i.e.,by amendment of the Code- Sections 130 and 131 allow the Chief Court to make rules only with respect to a matter other than procedure and the Judges think the signing of depositions is as much a matter of procedure as the recording of them. A rule therefore made by the Chief Court would not have the force of law and if a witness chose to refuse to sign he could not be made to do so.

In the Criminal Procedure Code section 554 (e) may perhaps provide power to make a rule like that proposed,but it is obviously inconvenient where Chapter XXV gives detailed instructions for the recording of evidence that a magistrate should have to look outside that chapter to be sure of his ground and the Judges are not therefore prepared to frame a rule. They are of opiion that the amendment of the Code would be simpler and far more useful in practice, but I am to add that in their opinion the case is not one of in which the amendment of the Code is necessary.

I have the honor to be ,

S i r ,

Your most obeaient servant ,

M. S. L.

REGISTRAR.

Re signatures of witnesses being taken to their depositions (22

G.R.S. 28]

(47)

Diary No. of letter replied to_____

GENERAL AND REVENUE SECRETARIAT.
( )

, the 2 191 .
Rs nots

Date of issue 17th March, 1916

Signed by Mr. G. Sreenivasa Iyer

I aper under disposal

(6) File No. 265-14
Serial No. 5

Proceedings of the Government of His Highness the Maharaja of Mysore

READ—

Subject no 426 of the Representative Assembly of 1913 requesting that signatures of witnesses may be directed to be taken to their depositions both in civil and Criminal cases

~~ORDER THEREON.—No.~~

2. Correspondence ending with letter no 1081/79 dy 26th Aug 1915 from the Registrar, Chief Court, forwarding the opinion of the Judges of the Chief Court on the above representation.

P. T. over

SUBJECT.

GPB—50,000—1-12-12

(3)

Order - No. 93706-7

Govt consider it desirable to have the Signatures of witnesses taken to depositions made by them except in Small Cause and Summary trials.

2. The Chief Court is requested further to take action in order to bring the above rule into effect in respect of Civil cases.

3. Necessary action is being taken in the Legislative Department for enforcing the rule in Criminal cases by having the Code of Criminal Procedure amended in this respect.

6/3/16
By order of Govt
14/3/16
Genl Deptt.

To The Registrar, Chief Court

The Dy Comr, Bangalore Dist.,
for communication to the M.R. members concerned.

Copy to the Legs Secy. (Brn)

Dasara Secy

Sent
17/3/1916.

Kg. Nil.
6/3/16.

Nil (5)
16/3